

2004 LEGISLATIVE SUMMARY -- NEW AND AMENDED STATUTES

LEGISLATION PASSED BY THE 2004 INDIANA GENERAL ASSEMBLY AFFECTING THE INDIANA DEPARTMENT OF REVENUE

(Legislation is listed by Code Citations affected on Pages 14-17)

LAWS ENACTED BY BILL NUMBER

SB 263 – IC 6-8.1-3-17; IC 6-8.1-5-1; IC 6-8.1-9-1; IC 6-8.1-9-1.2 (effective July 1, 2004). As a result of a recodification of Title 33, several sections of the code were changed to reflect the new code cite within Title 33.

SB 278 – IC 6-2.5-10-5 (effective January 1, 2005). Requires the Department to collect and maintain information for all retail merchants concerning the merchants' industry codes under the North American Industry Classification System Manual.

HB 1001 Section 88; noncode (effective January 1, 2004). Provides that a taxpayer who pays property taxes in 2004 that were payable in 2003 is entitled to the Income Tax Deduction for property taxes paid in 2004 equal to the lesser of the amount of taxes paid or \$2,500, minus the amount of any deduction claimed in 2003, if part of the tax bill was paid in 2003. Both years of the deduction may be claimed on the Individual Income Tax Return that is filed for the 2004 tax year.

HB 1017 – IC 13-23-12-7 (effective July 1, 2004). If an owner of an underground storage tank registered the tank before January 1, 2004, the \$2,000 penalty per year for unpaid fees may not be assessed against the owner for failure to pay the fee, if the fee was due before January 1, 2004.

HB 1024 – IC 6-3.1-11-15 (effective July 1, 2004). Reduces the square footage requirement from 300,000 to 250,000 for a vacant industrial building to qualify for the Industrial Recovery Tax Credit.

HB 1029 – IC 31-16-12.5 (effective July 1, 2004). Provides that a custodial parent may file for a setoff of child support from an Income Tax Refund payable to the obligor. The delinquent child support must total at least \$1,500, and the obligor must have intentionally violated the terms of the child support order.

The court is required to send an order to the Department to determine the obligor's eligibility for a state tax refund and whether the person has filed a Joint Income Tax Return. The Department is required to respond; and, if the response is positive, then the court shall set the matter for hearing. If the court issues a final order for a State Income Tax Refund Setoff, the order shall include the amount of child support that is owed, the arrearage that the Department shall withhold from the refund and the obligor's Social Security Number. The court is required to notify the Department before November 1 of the taxable year for which the refund is payable.

HB 1042 – IC 4-32-6-20.5; IC 4-32-6-23.5; IC 4-32-9-16.5 (effective July 1, 2004). Provides that for the purpose of distributing excess charity gaming receipts, the law expands the definition of "qualified recipient" to include hospitals, health facilities, psychiatric facilities, charitable activities of local law enforcement agencies and veterans' homes.

HB 1055 – IC 6-3.1-19-3; IC 6-3.1-19-5; IC 36-7-13 (effective July 1, 2004). Provides that a taxpayer is entitled to the CRED Credit on a qualified investment, even if no Incremental Sales or Income Taxes are deposited in the Incremental Tax Financing Fund.

Provides specific criteria to establish the date a business would be disqualified for the CRED Credit because of reduction or cessation of operations in the district. Provides that a taxpayer may appeal the Department's proposed order to deny the credit. Requires a hearing panel to be established composed of the Commissioner of the Department, State Budget Director and the Director of the Department of Commerce. The taxpayer is allowed to appeal the panel's decision to the Tax Court.

Requires the Department to calculate the base Sales and Income Tax amounts no later than 60 days after a district is modified.

Provides that if the State Budget Agency fails to take action on an ordinance designating a district within 120 days of the date the ordinance is submitted to the State Budget Agency, the designation of the ordinance is considered approved.

HB 1114 – IC 6-2.5-4-6 (effective March 9, 2004). Provides that if charges for telecommunication services not taxable are aggregated with charges that are taxable, the charges for the nontaxable services are exempt from the Sales Tax if the

provider can reasonably identify the charges not subject to the Sales Tax from the service provider's books and records kept in the regular course of business.

HB 1154 – IC 6-4.1-1-3 (effective July 1, 2004). Amends the inheritance tax to provide that a stepchild of a decedent shall be classified as a Class A transferee, instead of a Class C transferee.

HB 1190 – IC 8-1-8.3 (effective March 16, 2004). Provides that a public utility employee who holds a Commercial Driver's License and who works during a utility service interruption emergency is exempt from any regulation of the maximum hours of service that the employee may work under 49CFR395 (Code of Federal Regulations).

HB 1254 – IC 9-24-6-11.5; IC 9-24-6.5 (effective July 1, 2004). Provides that the Bureau of Motor Vehicles may adopt rules to comply with federal requirements concerning background checks for an individual seeking a Hazardous Materials Endorsement for a Commercial Driver's License. Provides provisions for the revocation and renewal of the endorsement.

HB 1273 – IC 27-8-10-2.1; 27-8-10-2.4 (effective January 1, 2005). Repeals the provision that allows an Income Tax Credit for assessments paid by insurance companies for the Indiana Comprehensive Health Insurance Association.

Provides that an insurance company may annually claim a credit equal to 10 percent of the total amount of unused credits that are available on January 1, 2005. The credit is not available until taxable years beginning after December 31, 2006.

HB 1365 – IC 4-32; IC 6-2.5; IC 6-3; IC 6-3.1; IC 6-4.1; IC 6-8.1; IC 36-7-13; noncode (effective--see below). Increases the cap on total prizes awarded for one pull tab, punchboard or tip board game from \$2,000 to \$5,000. Increases the prize for a single winning ticket from \$300 to \$599 **(effective July 1, 2004).**

Grants a credit against Indiana Use Tax for vehicles, watercraft and aircraft that are brought into Indiana, on which Sales Tax has already been paid in another state **(effective July 1, 2004).**

Clarifies that satellite TV and satellite radio services will be subject to Sales Tax in the same manner that cable TV is taxed **(effective March 1, 2004).**

Provides that vehicles, watercraft and aircraft that are sold in Indiana and are immediately taken to another state for registration are no longer exempt from Indiana Sales Tax **(effective July 1, 2004).**

Repeals the imposition of Sales Tax on complimentary hotel rooms and the reporting requirements of the retail merchant **(effective April 1, 2004).**

Requires certain out-of-state entities to register to collect Sales Tax if the entity has a related member located in Indiana **(effective July 1, 2004).**

Provides that "gross retail income" does not include charges for installation of tangible personal property if the charges are separately stated on the invoice **(effective March 18, 2004).**

Provides that "delivery charges" are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of the property, including but not limited to transportation, shipping, postage, handling, crating and packing **(effective March 18, 2004).**

Provides that the Sales Tax Bad Debt Deduction is assignable only if the retail merchant that paid the tax assigned the right to the deduction in writing **(effective July 1, 2004).**

Provides a Sales Tax Exemption for separately-metered utility services provided to a business that locates in an area containing a completely or partially inactive or closed military base. The exemption is for five years from the time that the business begins operations **(effective July 1, 2004).**

Revises the calculation of the Net Operating Loss (NOL) Deduction for both individuals and corporations **(effective January 1, 2004).**

Makes the Research Expense Credit permanent. The credit was set to expire on December 31, 2013 **(effective July 1, 2004).**

Provides for pass-through entities that are wholly or partially owned by an electric cooperative to claim a refundable EDGE Credit (Indiana's Economic Development for a Growing Economy Credit, **effective January 1, 2004).**

Extends the Hoosier Business Investment Tax Credit until December 31, 2007. It was originally scheduled to expire on December 31, 2005 **(effective January 1, 2004)**.

Provides a corporate Adjusted Gross Income tax rate of five percent for businesses that locate new operations in a completely or partially inactive or closed military base **(effective January 1, 2005)**.

Creates an Income Tax Credit for a qualified investment in a business located in a military base, a military base reuse area, an economic development area or a military base recovery site. The amount of the credit depends on the type of business, the number of jobs created and the amount of the investment. The maximum amount of the credit cannot exceed 30 percent of the investment **(effective January 1, 2005)**.

Provides that an adopted child is not considered a Class A transferee, unless the child was adopted before the child was totally emancipated **(effective July 1, 2004)**.

Repeals IC 9-18-9-4 that provided a fee for a converter dolly that is used with a semitrailer **(effective July 1, 2004)**.

Provides that a taxpayer who is entitled to the Community Revitalization Enhancement District (CRED) Tax Credit may claim the credit regardless of whether any incremental Income or Sales Taxes have been deposited in the Incremental Tax Financing Fund. Provides that a district must terminate no later than 15 years after Incremental Income or Sales Taxes are first allocated to the district. Provides that if the State Budget Agency fails to act on an ordinance that designates a CRED District within 120 days, the ordinance is considered adopted. Establishes a procedure and criteria for appealing a decision by the Department that the taxpayer is not eligible for the CRED Credit because the taxpayer's business relocated its operations into the district from another location in Indiana **(effective July 1, 2004)**.

Authorizes the Department to publish on the Internet a list of taxpayers who are subject to tax warrants of over \$1,000 issued at least 24 months before the date of the publication of the list. Requires the Department to send a notice to the taxpayer at least two weeks before the posting. The authority to publish the list expires on June 30, 2006 **(effective July 1, 2004)**.

Establishes an interim Study Committee on Corporate Taxation to study the utilization of Passive Investment Corporations by companies doing business in Indiana **(effective July 1, 2004)**.

CODE CITATIONS AFFECTED

CHARITY GAMING (IC 4-32)

IC 4-32-6-20.5 (effective July 1, 2004). Defines "qualified recipient" for purposes of charity gaming proceeds to include hospitals, health facilities, psychiatric facilities, charitable activities of local law enforcement agencies and veterans' homes.

IC 4-32-6-23.5 (effective July 1, 2004). Defines a "veterans' home" for purposes of charity gaming proceeds to include the Indiana Veterans' Home, the VFW (Veterans of Foreign Wars) National Home for Children, and the Indiana Soldiers' and Sailors' Children's Home.

IC 4-32-9-16.5 (effective July 1, 2004). Provides that a veterans' home is not considered to be an affiliate, parent, or subsidiary organization of a qualified organization that is a bona fide veterans' organization.

IC 4-32-9-33 (effective July 1, 2004). Increases the cap on total prizes awarded for one pull tab, punchboard or tip board game from \$2,000 to \$5,000. Increases the prize for a single winning ticket from \$300 to \$599.

SALES AND USE TAX (IC 6-2.5)

IC 6-2.5-1-5 (effective March 18, 2004). Provides that installation charges separately stated on an invoice or bill of sales will be exempt from the Sales Tax. Provides that "delivery charges" are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of the property, including but not limited to transportation, shipping, postage, handling, crating and packing.

IC 6-2.5-3-1 (effective July 1, 2004). Amends the Use Tax to provide that a "retail merchant" includes any merchant located out-of-state that sells in Indiana and has a related entity located in Indiana.

IC 6-2.5-3-5 (effective July 1, 2004). Provides that vehicles, watercraft and aircraft are granted a credit against the Use Tax if the Sales Tax has been paid in another state.

IC 6-2.5-4-1 (effective March 18, 2004). Provides that transfer of property is considered to have occurred after delivery of the property to the purchaser.

IC 6-2.5-4-4.5 (effective April 1, 2004). Repeals the imposition of the Sales Tax on the value of complimentary hotel rooms.

IC 6-2.5-4-5 (effective July 1, 2004). Provides a Sales Tax Exemption in an area containing a completely or partially inactive or closed military base. The exemption is for five years from the time that the business begins operations.

IC 6-2.5-4-6 (effective March 9, 2004). Provides that if charges for telecommunications services that are not taxable are aggregated with charges that are taxable, the charges for the nontaxable services are exempt from the Sales Tax if the provider can reasonably identify the charges not subject to the Sales Tax from the provider's books and records kept in the regular course of business.

IC 6-2.5-4-11 (effective March 1, 2004, retroactive). Clarifies that satellite TV and satellite radio services will be subject to the Sales Tax in the same manner that cable TV is taxed.

IC 6-2.5-5-15 (effective July 1, 2004). Provides that vehicles, watercraft and aircraft are subject to the Sales Tax, even if the property is going to be taken to another state to be registered. This is accomplished by the repeal of the current exemption.

IC 6-2.5-6-9 (effective July 1, 2004). Provides that the Sales Tax Bad Debt Deduction is assignable only if the retail merchant that paid the tax assigned the right to the deduction in writing.

IC 6-2.5-6-15 (effective April 1, 2004). Repeals the provision that requires innkeepers to report the number of complimentary rooms provided to customers and the amount of Sales Tax attributable to those complimentary rooms.

IC 6-2.5-8-10 (effective July 1, 2004). Requires entities that are located out-of-state and make sales in Indiana to register to collect the Sales Tax, if the entity has a related member located in Indiana.

IC 6-2.5-10-5 (effective January 1, 2005). Requires the Department to collect and maintain information for all retail merchants concerning the merchants' industry codes under the North American Industry Classification System Manual.

INCOME TAXES (IC 6-3)

IC 6-3-1-3.5 (effective January 1, 2004, retroactive). Provides that individuals, corporations, nonresidents and insurance companies are required to add back any deduction taken under Section 172 of the Internal Revenue Code for a Net Operating Loss Deduction.

IC 6-3-2-1.5 (effective January 1, 2005). Provides a Corporate Adjusted Gross Income Tax Rate of five percent for businesses that locate new operations in a completely or partially inactive or closed military base.

IC 6-3-2-2.5 (effective January 1, 2004, retroactive). Provides revised calculations for individuals' Net Operating Losses. The Indiana loss is equal to the amount of federal Net Operating Loss for the taxable year adjusted for the modifications required under IC 6-3-1-3.5.

IC 6-3-2-2.6 (effective January 1, 2004, retroactive). Provides a revised calculation for a corporation or a nonresident to calculate a Net Operating Loss. The Indiana loss is equal to the amount of federal Net Operating Loss for the taxable year derived from sources within Indiana and adjusted for the modifications required under IC 6-3-1-3.5.

INCOME TAX CREDITS (IC 6-3.1)

IC 6-3.1-4-6 (effective July 1, 2004). Makes the Research Expense Credit permanent. The credit was scheduled to expire on December 31, 2013.

IC 6-3.1-11-15 (effective July 1, 2004). Reduces the square footage requirement from 300,000 to 250,000 for a vacant industrial building to qualify for the Industrial Recovery Tax Credit.

IC 6-3.1-11.6 (effective January 1, 2005). Creates a Military Base Investment Cost Credit. The statute provides an Income Tax Credit for a qualified investment in a business located in a military base, a military base reuse area, an economic development area or a military base recovery site. The amount of the credit depends on the type of business, the number of jobs created and the amount of the investment. The maximum amount of the credit may not exceed 30 percent of the investment.

IC 6-3.1-13-7 (effective January 1, 2004, retroactive). Includes a trust, limited liability company and limited liability partnership in the definition of a “pass-through entity” for purposes of the EDGE Tax Credit.

IC 6-3.1-13-21 (effective January 1, 2004, retroactive). Provides that pass-through entities that are wholly or partially owned by electric cooperatives may claim a refundable EDGE Credit.

IC 6-3.1-19-3 (effective July 1, 2004). Provides that a taxpayer who is entitled to the Community Revitalization Enhancement District (CRED) Tax Credit may claim the credit regardless of whether any Incremental Income or Sales Taxes have been deposited in the Incremental Tax Financing Fund.

IC 6-3.1-19-5 (effective July 1, 2004). Establishes procedures and criteria for appealing a decision by the Department that a taxpayer is not eligible for the CRED Credit because the taxpayer’s business relocated its operations into the district from another location in Indiana. Provides that the Department must issue a proposed order to the taxpayer who is subject to disqualification for the credit. A hearing panel composed of one representative of the Department, the State Budget Agency and the Department of Commerce shall hear any appeal on the denial of the application for the credit. Provides that the taxpayer may appeal the decision of the hearing panel to the Tax Court.

IC 6-3.1-26-26 (effective January 1, 2004, retroactive). Extends the Hoosier Business Investment Tax Credit until December 31, 2007. It was originally scheduled to expire on December 31, 2005.

INHERITANCE AND ESTATE TAX (IC 6-4.1)

IC 6-4.1-1-3 (effective July 1, 2004). Provides that a stepchild of a decedent shall be classified as a Class A transferee, instead of a Class C transferee for purposes of Inheritance Tax Exemptions.

IC 6-4.1-1-3 (effective July 1, 2004). Provides that an adopted child is not considered to be a Class A transferee if the adoption occurred after the child was totally emancipated.

TAX ADMINISTRATION (IC 6-8.1)

IC 6-8.1-3-16 (effective July 1, 2004). Authorizes the Department to publish on the Internet a list of taxpayers who are subject to tax warrants issued at least 24 months before the date of the publication of the list. The amount of the warrant must be more than \$1,000. The list is to be updated and published on a monthly basis. Requires the Department notify the taxpayer at least two weeks before the posting. The authority to publish the list expires on June 30, 2006.

OTHER PROVISIONS

IC 8-1-8.3 (effective March 16, 2004). Provides that a public utility employee who holds a Commercial Driver's License and works during a utility service interruption emergency is exempt from any regulation of the maximum hours of service that the employee may work under 49 CFR 395.

IC 9-18-9-4 (effective July 1, 2004). Repeals the fee that was charged for a converter dolly that is used with a semitrailer.

IC 9-24-6-11.5 (effective July 1, 2004). Provides guidelines for the revocation of the Hazardous Materials Endorsement to a Commercial Driver's License.

IC 9-24-6.5 (effective July 1, 2004). Provides that the Bureau of Motor Vehicles may adopt rules to comply with federal requirements concerning background checks for an individual seeking a Hazardous Materials Endorsement for a Commercial Driver's License. Also provides for the renewal of the endorsement.

IC 27-8-10-2.1 (effective January 1, 2005). Repeals the provision that allows an Income Tax Credit for assessments paid by insurance companies to the Indiana Comprehensive Health Insurance Association.

IC 27-8-10-2.4 (effective January 1, 2005). Provides that an insurance company may annually claim a credit equal to 10 percent of the total amount of unused credits that are available on January 1, 2005. The credit carry-forward is not available until taxable years beginning after December 31, 2006.

IC 31-16-12.5 (effective July 1, 2004). Provides that a custodial parent may file for a Refund Offset of child support from an Income Tax Refund payable to the obligor. The delinquent child support must total at least \$1,500, and the obligor must have intentionally violated the terms of the child support order. The court is required to send an order to the Department to determine the obligor's eligibility for a state tax refund and whether the person has filed a Joint Income Tax Return. The Department is required to respond; and, if the response is positive, then the court shall set the matter for hearing. If the court issues a final order for a State Income Tax Refund Offset, the order shall include the amount of child support that is owed, the arrearage that the Department shall withhold from the refund and the obligor's Social Security Number. The court is required to notify the Department before November 1 of the taxable year for which the refund is payable.

IC 36-7-13-10.5 (effective July 1, 2004). Provides that if the State Budget Agency fails to take action on an ordinance designating a district within 120 days of the date the ordinance is submitted to the Budget Agency, the designation of the ordinance is considered approved.

IC 36-7-13-14 (effective July 1, 2004). Requires the Department to calculate the Sales Tax incremental amount and Income Tax incremental amount no later than 60 days after a district boundary is modified.

This legislative summary may also be found on the Indiana Department of Revenue's web site at www.in.gov/dor/reference/legal/summary.html.
